



**UNITED STATES DEPARTMENT OF COMMERCE**  
**Patent and Trademark Office**

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/596,081    06/16/00    BRICE

M    11047.100

EXAMINER

IM52/0907

PATTON BOGGS LLP  
ATTORNEYS AT LAW  
2550 M STREET NW  
WASHINGTON DC 20037-1350

GRAHAM, G  
ART UNIT

PAPER NUMBER

1744  
DATE MAILED:

09/07/01

*6*

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

# Office Action Summary

Application N .

09/596,081

Applicant(s)

BRICE, MICHAEL F.

Examiner

Gary K Graham

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1 and 2 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 2 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5.

- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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## **DETAILED ACTION**

### ***Drawings***

Formal drawings are required in this application because the current drawings are difficult to read and it is difficult to clearly see the structure of the rubber insert from the sketched drawings. Applicant is advised to employ the services of a competent patent draftsman outside the Office, as the Patent and Trademark Office no longer prepares new drawings.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, lines 18 and 19, there is no antecedent basis for "the full functioning", "the twin articulating head" and "the dento-gingival junction".

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***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Brice '421.

The patent to Brice discloses the invention as is claimed. Note figure 10 which shows a toothbrush including an elongated handle (61) shaped to be grasped by a user, a first and second neck (64L,64R) extending from an end of the handle and said necks supporting first and second bristle supports or heads (66,67) at distal ends thereof. A plurality of first and second bristles extend from the respective heads. Said first and second bristles extend in the same direction and are substantially parallel to one another.

The "wherein" phrase" at the end of claim 1 does not appear to define any structure not shown or suggested by the Brice patent. The first and second bristles of the Brice patent will have a first stiffness, as far as defined. The first and second necks will be formed of a material having a predetermined resiliency, flexibility and bending resistance, as far as defined. Defining that such characteristics are "set in accordance with a predetermined brushing force to be applied by said bristles thereby achieving the full functioning of the twin articulating head in making and maintaining contact with the dento-gingival junction" does not appear to define any structure or

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particular structural relationships not disclosed by the Brice patent. Indeed, there will be some relationship between the brushing force and resilience, flexibility and bending. However, applicant has not claimed any particular relationship. Merely stating that the relationship is set to achieve full functioning does not appear to define anything more than that which is suggested by the Brice patent.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brice '421 in view of Lamond et al '510.

The patent to Brice discloses all of the above recited subject matter with the exception of the handle having a cavity therein with a resilient thumb contact inserted therein.

The patent to Lamond discloses a toothbrush (fig. 1) including a handle (4) with a cavity (24) therein and a resilient pad (20) inserted into said cavity. Resilient pads, as disclosed by Lamond, are known to be provided with toothbrush handles to increase the grip of the user.

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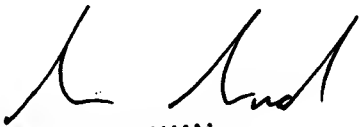
It would have been obvious to one of skill in the art to provide the handle of Brice with a cavity and a resilient pad therein, as clearly suggested by Lamond, to increase the grip of the user of such toothbrush.

*Conclusion*

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Gary K. Graham at 703-308-1270. The Examiner's fax number is 703-872-9546. The fax phone number for this Group is (703) 305-7719. The Examiner can normally be reached Tuesday through Friday.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0651.

  
GARY K. GRAHAM  
PRIMARY EXAMINER  
GROUP 1700

September 6, 2001  
GKG